IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4663 OF 2004

Mr.Palesh Bherulal Jain @ Dhakad
& Anr. ...Applicants

Versus

Shri Nareschandra M.Rathod & Ors. ...Respondents

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Mr.H.H.Ponda for Applicants.

Mr.Shirish Gupte, Sr.Counsel with Mr.Prakash Naik for Respondents 1 to 5.

Mr.D.R.More, A.P.P. for Respondent No.6.

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**CORAM: A.M.KHANWILKAR, J.**

**NOVEMBER 23, 2004.**

**P.C.**

1. This Application takes exception to the order passed by the Metropolitan Magistrate, 28th Court, Esplanade, Mumbai dated 2nd October 2004, rejecting the prayer made on behalf of the Applicants herein for production of original documents and the statements and the list of

muddemal property before the Court. This relief was founded on the provisions of Section 173(5) of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the Code'), which obligates supplying the relevant documents and statements along with the police report read with Section 207(v) of the Code, which requires that the Magistrate shall furnish to the accused, free of cost, copy amongst others, documents or relevant extracts forwarded to the Magistrate under sub-section 5 of Section 173 of the Code. Reliance is also placed on Section 238 of the Code, which obligates the Magistrate before commencement of the trial, to satisfy himself that requirements of Section 207 of the Code are complied with. Attention is also drawn to Rule 33 and Rule 67 of Chapter VI under the Criminal Manual, which requires the Court to insist upon the list of documents and production thereof, to be made in the manner prescribed by Rule 33 and Rule 67. The Court below, however, without adverting to this requirement, proceeded to observe that it is not the practice of the Court to call upon the prosecution to produce the list of documents, as

was prayed on behalf of the Applicants. In the circumstances, the order as passed by the Court below cannot be sustained. Instead, the application preferred by the Applicants praying for direction to the prosecution to submit the list of documents and to produce all the documents in the original before the Court, deserves to be granted.

2. The documents shall be produced before the Court in sealed cover, to be opened by the concerned Judge of that Court.

3. Application succeeds to the above extent. Ordered accordingly.

4. All concerned to act on the ordinary copy of this order, duly authenticated by the Office.

A.M.KHANWILKAR, J.